

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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PC

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/364,343	07/30/99	DOYLE	J KJ-100

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QM22/0521

EXAMINER

MENDEZ, M

ART UNIT	PAPER NUMBER
3763	10

DATE MAILED: 05/21/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/364,343</b>	Applicant(s) <b>Doyle, et al.</b>
	Examiner <b>Manuel Mendez</b>	Art Unit <b>3763</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on Mar 5, 2001.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-8 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-8 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15)  Notice of References Cited (PTO-892) 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20)  Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. **Claims 1, 3, 4, and 5** are rejected under 35 U.S.C. 102(b) as being anticipated by **Hussey**. The referenced patent shows in figures 1-6, a flexible chamber (1, 10) having an internal volume containing enema fluid (which is considered a sterile solution), the chamber having an orifice, a nozzle (15) having a first opening at one end and a second opening at the other end, wherein the first opening is affixed to the orifice of the chamber and the second opening dispenses the enema fluid, a protective tip (20) affixed to the second opening of the nozzle maintaining the solution in a sterile state, and a removable packaging band (30) around the protective tip. In relation to **claims 3 and 4**, figure 1 shows a screw-on cap to affix the first opening to the orifice of the chamber, and figure 2 shows a one-piece enema unit. In relation to **claim 5**, figures 1 and 2 both disclose a straight nozzle.

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***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Hussey in view of Reddick**. Hussey does not disclose the use of a filter located in the first opening of the nozzle.

However, the use of filters in nozzles is conventional as evidenced by the teachings of Reddick. In figure 2 of the Reddick patent, items 45 and 28 are filters located in the first opening of the nozzle. Based on the above observation, it would have been obvious to modify Hussey by enhancing nozzle (15) with a filter as taught by Reddick, since Reddick suggests in column 5, lines 63-67, that the filters can be used to remove particulate matter and bacteria from the sterile solution, and therefore eliminating the possibility of infections.

5. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over Hussey in view of Rose. Hussey does not disclose an angled nozzle. However, the design of an angled nozzle is conventional as evidenced by the teachings of Rose. Rose shows in figures 6-8, various nozzle designs with variations in the angular deployment. **Based on the teachings of Rose, a person of ordinary skill in the art would consider the use of angled nozzles, an obvious design choice.**

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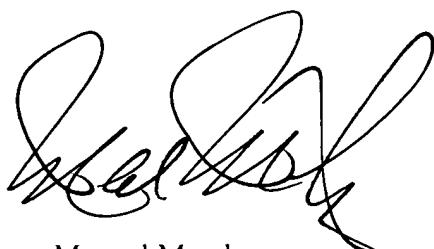
6. **Claims 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hussey in view of Wallace, et al. Hussey does not disclose a dispenser having a sterile solution containing sodium chloride and/or distilled water. Examiner would like to point out that all the references utilized in this action are capable of infusing substances containing the disclosed percentages of sodium chloride and/or distilled water. Therefore, since the structure of Hussey is capable of infusing said specific concentrations, the subject matter of claims 7 and 8 is considered to be inherent.

Additionally, Wallace, et al., demonstrates that it is conventional to use dispensers with nozzles to infuse substances with various concentrations of sodium chloride and distilled water. Based on the teachings of Wallace, et al., a person of ordinary skill in the art would have certainly considered an obvious design alternative the use of the dispenser of Hussey in combination with any fluid concentration. The fact that the applicant elected to claim 0.9 percent USP sodium chloride and/or 0.9 percent distilled water does not per se makes the claims patentable since it is well known that a dispenser can be utilized to infuse any substance and concentration thereof.

**Note: This application has been transferred to Primary Examiner Mendez in view of Mr. Yasko's retirement. In order to clarify the record, Examiner Mendez utilized various new references and arguments not presented before. For this reason, this action is not final.**

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Mendez whose telephone number is (703) 308-2221.

A handwritten signature in black ink, appearing to read "Manuel Mendez".

Manuel Mendez

May 15, 2001